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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,441	01/22/2002	Bruce Raymond Mackinnon	P67278US0	4255

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EXAMINER
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CHIN SHUE, ALVIN C

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/926,441	<b>Applicant(s)</b> MACKINNON, BRUCE RAYMOND	
	<b>Examiner</b> Alvin C. Chin-Shue	<b>Art Unit</b> 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9,13,16,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9,13,16,24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 9,13,16,24 and 25 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 13 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Buttgerit. Buttgerit in fig.1 shows a step member 2 and an upwardly oriented hook 4a.

Claims 9,13 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Kemper. Kemper shows a wedge 44, attachment member 12 (integral portion of member 12 between the wedge and the wall 20,22) with hook 14, and flange 30. The outwardly extending portion of member 12 is capable of being stepped on.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buttgerit in view of Eich. Buttgerit shows the claimed wedge with the exception of the substantially same shape cross section of the inner and outer faces along the length thereof. Eich shows a wedge member having substantially the same cross

section inner and outer faces extending the length thereof to provide corresponding abutting surfaces. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the face at 5d of Buttgerit to be substantially the same cross section as that of the face at 5b to enable both surfaces to abut similar cross section surfaces. Furthermore, to angle the face as claimed depending upon the spacing to be filled between the flange and hook and the thickness of the supporting surface to be used on, would have been an obvious engineering expedient.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eich in view of Buttgerit. Eich shows the claimed wedge with the exception of the enclosed slot. Buttgerit shows a wedge member having an enclosed slot. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the wedge member of Eich to comprise an enclosed slot to enable its use as a wedging connector having a fastener extending there through. Furthermore, to angle the face as claimed depending upon the spacing to be filled between the flange and hook and the thickness of the supporting surface to be used on, would have been an obvious engineering expedient.

Claims 13 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood in view of Mey and German pat' 295 to Von Kreisler. Wood shows the

claimed step with the exception of the integral attachment portion and wedge member. Mey shows an integral attachment portion to enable a wedged attachment. Von Kreisler shows a wedge. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Wood to comprise an integral attachment portion, in lieu of his clamping hook portion, to enable a wedged attachment of his step, and a wedge capable of being used with his step for wedged attachment of his step. (Note applicant has not positively claimed any link between the wedge and step).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buttgereit in view of EP pat.'316 to Mey or Wood. Buttgereit shows the claimed step with the exception of the upwardly oriented hook. Mey and Wood both show attachment portions with upwardly oriented hooks. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the attachment portion of Buttgereit to comprise a hook, in lieu of his clamping hook to enable attachment through an aperture and abutting a inner wall surface.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buttgereit and either Mey or Wood as applied to claim 13 above, and further in view of Eich as applied above. Furthermore, to angle the face as claimed depending upon the spacing to be filled between the flange and hook and the

thickness of the supporting surface to be used on, would have been an obvious engineering expedient.

Applicant's arguments filed 10.02.03 have been fully considered but they are not persuasive. With respect to Buttgereit, the portion 4a comprises an upwardly oriented hook. The member 2 can be used as a step. Applicant stated that the member 2 is not connected in a cantilevered manner, it is noted that such is not claimed, furthermore, a positive combination of the step member and utility pole is not claimed. With respect to Kemper, the bolt member is capable of being steeped on, element 30 is a flange, and element 14 comprises an upwardly oriented portion which hooks to the inner portion of the wall.

This application contains claims directed to the following patentably distinct species of the claimed invention: figs 5 and 5a.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 13 and 25 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added.

An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin C. Chin-Shue whose telephone number is 703-308-2475. The examiner can normally be reached on Monday-Friday, 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-3008-1113.



Alvin C. Chin-Shue  
Primary Examiner  
Art Unit 3634

ACS